XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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# आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**CRIMINAL APPEAL NO.581 /2004**

**APPELLANT** (In Jail) — Vikram Naik alias Arun Kumar S/o Sundai Naik, aged 19 years, R/o Old Bus Stand, Raigada, P.S. Raigada, Distt. Raigada (Orissa)

Vs

**RESPONDENT** — State of Chhattisgarh, Through P.S. Moudhapara, Distt. Raipur (CG)

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**Present:**
Mr. V.K. Pandey, Advocate for the appellant.
Mr. Arvind Dubey, Panel Lawyer for the respondent-State.

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ORAL JUDGMENT

(5th November, 2007)

**Per Dhirendra Mishra, J:**

Heard.

Admit.

The matter is listed on M.Cr.P. No.1916/04, however, with the consent of the parties, the appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 17.2.2007 passed by learned Additional Special Judge, N.D.P.S., Raipur in Special Criminal Case No.34/02 whereby learned Special Judge has convicted the appellant under Section 20 (B) (1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 6 months.

Case of the prosecution, in brief, is that on 24.3.2002 Shri M.S. Thakur, Assistant Police Inspector, Police Station Maudhapara received secret information that a person is standing near Marhi Mata Temple with

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a bag containing cannabis. On receiving the information, he recorded the same and proceeded for investigation after recording reasons for not obtaining warrant before proceeding and thereafter after complying with the procedure prescribed under the Act recovered 7 kg 500 gms of cannabis from the possession of the appellant, which was on preliminary examination found to be cannabis. Samples of the same were forwarded to the Forensic Science Laboratory through the superior officer and as per report of the FSL, the articles seized from the appellant was confirmed to be cannabis.

Learned counsel for the appellant submits that both the independent witnesses of recovery memo and seizure have not supported the case of prosecution and they have turned hostile. The reasons assigned by the investigating officer for not obtaining warrant as per the memo of Ex.P-3 is not convincing. Exclusive possession of the contraband has not been established by the prosecution and there is non-compliance of the mandatory provisions of the Act.

On the other hand, learned Panel Lawyer for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

M.S. Thakur (PW-5), Investigating Officer, has deposed that on 24.3.2002 he received secret information that a person putting on blue

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colour T-shirt and black full-pant is standing near Marhi Mata Mandir with jute bag containing cannabis. The information was recorded in the presence of witnesses and apprehending that the appellant may dispose of the contraband, he proceeded for effecting search and seizure without obtaining warrant after recording the reasons vide Ex.P-3 and after forwarding the same to the City Superintendent of Police, City Kotwali. He took two independent witnesses along with his staff to the place of incident where he found the appellant standing with the bag. On enquiry the appellant told his name and thereafter, after giving him notice of Ex.P-5 and apprising him about his lega rights under Section 50 of the Act and after obtaining his consent vide Ex.P-6 the bag of the accused was searched and in the said bag the cannabis like substance was recovered, which was found to be cannabis on preliminary examination. Thereafter, the cannabis was weighed, two samples were taken out and the packet of samples was duly sealed vide seizure memo of Ex.P-9. This witness has been examined at length by the defence, however, the defence has not been able to elicit any inconsistency or irregularity in the investigation conducted by this witness, as the mandatory provisions of the Act has been duly complied with.

It is true that independent witnesses namely Madanlal (PW-4) and Preetam Singh (PW-3) have not supported the case of the prosecution and they have turned hostile. They have denied that anything was seized in

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their presence from the appellant, howver, both the witnesses have admitted their signatures in the notice of Ex.P-5, consent of Ex.P-6, search memo of Ex.P-7, weighment memo of Ex.P-8, recovery memo of Ex.P-9 and arrest memo of of Ex.P-10.

In view of the fact that the version of the investigating officer Shri M.S. Thakur (PW-5) establishes that he had duly complied with the provisions of the Act before effecting seizure of the cannabis from the appellant and also considering that the independent witnesses though hostile have not denied their signatures in the relevant papers prepared during the investigation, there is no reason before the trial court to disbelieve the version of the investigating officer and in the considered opinion of this Court the conviction and sentence of the appellant based on the solitary testimony of the investigating officer is just and proper and the same does not call for interference.

In the result, the appeal preferred by the appellant has no substance, the same deserves to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Roshan/-

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